

STATE OF MICHIGAN
COURT OF APPEALS

ROGER E. WINKELMAN, Personal
Representative of the Estate of RICHARD L.
THIEL, Deceased,

Plaintiff,

v

REX MARTIN THIEL,

Defendant/Cross-Defendant,

and

OHIO COMPANY,

Defendant/Cross-Plaintiff/Third-
Party Plaintiff-Appellee,

v

JOYCE A. THIEL,

Third-Party Defendant-Appellant.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Third-party defendant Joyce Thiel appeals by leave granted from a circuit court order denying leave to appeal a probate court order denying her motion for summary disposition pursuant to MCR 2.116(C)(1). We reverse.

Plaintiff's decedent maintained a brokerage account with appellee Ohio Company, which wrongfully released the funds therein to defendant Rex Thiel. Appellant Joyce Thiel endorsed the check even though it was not made payable to her and the proceeds were eventually deposited in a Roney & Co brokerage account newly opened by appellant and jointly owned by Rex.

A ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Likewise, the issue whether a court has personal jurisdiction over a party is reviewed de novo on appeal. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001). The plaintiff bears the burden of establishing jurisdiction over the defendant, although only a prima facie showing of jurisdiction is needed to defeat a motion for summary disposition. *Id.* at 427.

Determining jurisdiction under the long-arm statute requires a two-part inquiry. First, this Court must ascertain if jurisdiction is authorized by MCL 600.705. Second, this Court must “determine if the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment.” *Aaronson v Lindsay & Hauer Int’l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999).

The long-arm statute permits the court to exercise jurisdiction over a person based on certain relationships between that person or his agent and the state if the cause of action arose out of that relationship. MCL 600.705; *Schneider v Linkfield*, 40 Mich App 131, 134; 198 NW2d 834 (1972), *aff’d* 389 Mich 608 (1973). One such relationship is “[t]he doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.” MCL 600.705(2). “A plain language reading of these words reveals that either the tortious conduct or the injury must occur in Michigan.” *Green v Wilson*, 455 Mich 342, 352; 565 NW2d 813 (1997)(Kelly, J.).

After Rex wrongfully obtained release of the funds from appellee, appellant endorsed the check despite the fact that she was not a payee and had no right to the funds and the money ended up in a money market account she had with Roney, a company headquartered in Detroit. Even assuming this tenuous connection with Michigan was sufficient to establish that the trial court had jurisdiction under the long-arm statute, the court nevertheless erred in concluding that it could exercise that jurisdiction.

First, the defendant must have purposefully availed [her]self of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state’s laws. Second, the cause of action must arise from the defendant’s activities in the state. Third, the defendant’s activities must be so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

A ‘purposeful availment’ is something akin either to a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan, something more than passive availment of Michigan opportunities[, such that] [t]he defendant will have reason to foresee being ‘haled before’ a Michigan court. [*Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978).]

There is no evidence that appellant had any contacts with Michigan. The evidence does not show that she undertook to do anything in Michigan or that she engaged in any activities substantially connected to Michigan. The most that has been shown is that she opened a money

market account with a brokerage firm headquartered in Detroit and joined with Rex in having the money deposited in that account, but there is no evidence that the account was actually opened or maintained in Detroit, i.e., that appellant actually conducted any activities in Michigan. At best, she passively availed herself of Michigan opportunities by investing with a firm headquartered in Detroit. Accordingly, we find that the lower courts erred in concluding that appellant was subject to the personal jurisdiction of the probate court.

Reversed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra